

## VERDICT FORM

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions.

We, the jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

### **TEVA'S DEFENSE OF INVALIDITY BASED ON ALLEGED OBVIOUSNESS**

#### **Differences between the invention and the prior art:**

- (1) Has Teva proven by clear and convincing evidence that one of ordinary skill in the art would have had reason or motivation to choose penciclovir as a lead compound? (A "YES" answer is a finding for Teva. A "NO" answer is a finding for Novartis.)

Yes \_\_\_\_\_ No ✓

- (2) Has Teva proven by clear and convincing evidence that one of ordinary skill in the art would have been motivated to make the necessary modifications to penciclovir to achieve famciclovir? (A "YES" answer is a finding for Teva. A "NO" answer is a finding for Novartis.)

Yes \_\_\_\_\_ No ✓

- (3) Has Teva proven by clear and convincing evidence that one of ordinary skill in the art would have reasonably expected the successful properties of famciclovir? (A "YES" answer is a finding for Teva. A "NO" answer is a finding for Novartis.)

Yes \_\_\_\_\_ No ✓

**Objective indicia of non-obviousness:**

- (4) Which of the following factors that tend to indicate nonobviousness, if any, has been established by the evidence with respect to the claimed invention – check any that apply:

- commercial success of a product due to the merits of the claimed invention.
- a long felt need for the solution that is provided by the claimed invention.
- ✓       unsuccessful attempts by others to find the solution that is provided by the claimed invention.
- copying of the claimed invention by others.
- ✓       unexpected and superior results from the claimed invention.
- acceptance by others of the claimed invention as shown by praise from others in the field or from the licensing of the claimed invention.
- ✓       other factor(s) indicating nonobviousness.

(5) If you answered yes to all of questions (1), (2) **and** (3), and considering your answers to question (4) above, do you find that Teva has proven by clear and convincing evidence that the asserted claims of the '937 patent would have been obvious in light of the prior art to a person of ordinary skill in the art? (A "YES" answer is a finding for Teva. A "NO" answer is a finding for Novartis.)

Yes \_\_\_\_\_ No (✓)

**TEVA'S DEFENSE OF UNENFORCEABILITY BASED ON ALLEGED INEQUITABLE CONDUCT**

- (6) Do you find that Teva has proven by clear and convincing evidence that a person with a duty of good faith, candor and honesty to the PTO knowingly withheld from or misrepresented to the PTO material information during the prosecution of the '937 patent? (A "YES" answer is a finding for Teva. A "NO" answer is a finding for Novartis.)

Yes \_\_\_\_\_

No ✓

- (7) If you answered yes to question (6), do you find that Teva has proven by clear and convincing evidence that the totality of the circumstances shows that an individual with a duty of good faith, candor and honesty to the PTO acted with the intent to deceive or mislead the patent examiner? (A "YES" answer is a finding for Teva. A "NO" answer is a finding for Novartis.)

Yes \_\_\_\_\_

No ✓

- (8) If your answers to questions (6) **and** (7) were yes, identify the individual(s), if possible:

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(9) If your answers to questions (6) **and** (7) were yes, weighing the degree of materiality and the degree of intent to deceive or mislead, has Teva proven by clear and convincing evidence that there was inequitable conduct committed in the prosecution of the '937 patent? (A "YES" answer is a finding for Teva. A "NO" answer is a finding for Novartis.)

Yes \_\_\_\_\_ No (✓)

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You have now reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations. The Presiding Juror should then sign and date the verdict form in the spaces below and notify the Security Guard that you have reached a verdict. The Presiding Juror should retain possession of the verdict form and bring it when the jury is brought back into the courtroom.

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DATED: NOV 18, 2009

Foreperson